

Department of the Army
First Region (ROTC)
US Army Cadet Command
Fort Bragg, North Carolina 28310-5000

FRMOI 600-1
28 November 2000

Personnel - General

PREVENTION OF SEXUAL HARASSMENT - AN OVERVIEW

FOR THE COMMANDER:



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SUPERSESSION: This MOI supersedes FRMOI 600-1, 26 Aug 96.

Distribution: A; D; J; S
Distribution codes used are explained in FRMOI 25-1.

This document is available on the INTERNET at:
www.rotc1.bragg.army.mil

PREVENTION OF SEXUAL HARASSMENT

Sexual harassment is illegal!

Sexual harassment is a violation of the Civil Rights Act (Title VII, Section 703).

AR 600-20, Army Command Policy, prohibits sexual harassment.

Sexual harassment interferes with productivity and morale and can ruin careers and lives of individuals and families.

WHAT IS SEXUAL HARASSMENT

The Equal Employment Opportunity Commission (EEOC) has published guidelines which define sexual harassment. These guidelines, which have been upheld by the courts, state:

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) Submission is made, either explicitly or implicitly, a term or condition of an individual's employment;
- 2) Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting the individual; or
- 3) The conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive environment.

Since 1975, sexual harassment has been recognized as a form of sex discrimination, which is illegal under Title VII of the Civil Rights Act. Title VII is enforced by the EEOC. Decisions are based on the circumstances surrounding each complaint, such as the nature of the sexual advances and the context in which they occurred.

Issues of sexual harassment require factual determination through appropriate administrative processes. False accusations of sexual harassment can have a serious effect on innocent men and women.

HOW TO RECOGNIZE SEXUAL HARASSMENT

There are two distinct types of sexual harassment recognized by the EEOC and the courts:

- 1) QUID PRO QUO HARASSMENT. The most common type of sexual harassment, and the easiest to identify, is what the courts call quid pro quo (this for that) harassment. This simply means that a person in power over another offers to trade a benefit for a sexual favor. The benefit could be training, promotion, awards, a coveted assignment, etc. It is not necessary that the benefit be clearly stated; it can be implied.

Pressuring an individual can be viewed as quid pro quo harassment, because of the nature of the power over the individual. Regardless of whether a subordinate resists or submits to a superior's pressure, such situations may be considered sexual harassment.

In a quid pro quo situation, a victim may receive a tangible benefit or suffer a tangible loss. Even if the victim benefits as a result of submitting to the pressure, the unwelcome attentions constitute sexual harassment.

2) HOSTILE ENVIRONMENT HARASSMENT. In this type of harassment, an offensive or hostile environment is created by sexually-oriented activity by fellow employees or supervisors.

Offensive/hostile environment harassment may be found when either the recipient of the harassment or other persons in the office object to the harassing conduct.

There have been cases where subordinates who have dated supervisors appeared to be promoted and rewarded with greater frequency than others in the organization. This can amount to a hostile or offensive environment for other employees, and may constitute sexual harassment. In a hostile environment, personnel may infer that decisions are being made on the basis of compliance with sexual requests.

Actions which may create a hostile environment constituting sexual harassment include:

- 1) Making suggestive comments about personnel and their sexual habits;
- 2) Lowering trousers to tuck in shirt;
- 3) Profanity/innuendoes of a sexual nature;
- 4) Requests for sex;
- 5) Intentional contact (pinching, fondling, etc.);
- 6) Vulgar/sexually suggestive cadence;
- 7) Display of sexually-related materials.

Sexually suggestive banter, which may be acceptable between the persons doing the bantering, may be offensive to other

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individuals. The work place is not the appropriate place for such behavior, and may result in allegations that the management tolerates a hostile environment.

Leaders are responsible for promoting a climate that is conducive to productivity. If leaders or managers are aware of any inappropriate behavior, they MUST take steps to put a stop to it. Inaction by supervisors may affect subordinates' ability to work effectively and accomplish the mission.

WHAT ARE YOUR RIGHTS

Each civilian, soldier, and cadet has the right to present a legitimate complaint without fear of intimidation, reprisal or harassment. All personnel are encouraged to use their chain of command to report complaints of sexual harassment. However, any person may present a complaint of sexual harassment to their commander, the Inspector General, or to their Equal Opportunity Advisor.

WHAT ARE YOUR RESPONSIBILITIES

Preventing sexual harassment is EVERYONE'S responsibility. Individuals should attempt to resolve a complaint by first informing the offender that the behavior must stop. However, depending upon the severity of the offense, or the position of the offender, this may not always be feasible. If the offensive behavior continues, individuals should report the harassment to the appropriate supervisory level.

The Department of Army has mandated Prevention of Sexual Harassment (POSH) training for all civilians and for military supervisors of civilians. This training is available through the installation Equal Employment Opportunity (EEO) Office. Personnel assigned to locations away from the installation should use this MOI as a source document for providing POSH training. It is management's responsibility to ensure POSH training is available to every soldier and civilian employee.

It is the individual's responsibility to attend such training.

Soldiers can receive training on the Army's Equal Opportunity (EO) complaint and appeals process through the Equal Opportunity Office.

Cadets will receive training through the ROTC curriculum and this MOI.

It is the responsibility of every First Region commander, leader, supervisor, and manager to:

1) Inform personnel that the issue of sexual harassment is a serious matter. Leaders must be proactive.

2) Ensure that allegations of sexual harassment are dealt with swiftly and fairly by following up on complaints and taking corrective action. Coordinate proposed corrective actions with appropriate officials; e.g., The Office of the Staff Judge Advocate, Directorate of Civilian Personnel, EEO Office for civilians, or the EO Office for military personnel.

Procedures for filing a complaint of sexual harassment and obtaining redress for such a complaint will be in writing, and

must be displayed at all times where all soldiers and civilian employees have access to them.

It is the responsibility of every First Region soldier, civilian, and cadet to examine their personal behavior at work and to eliminate offensive behavior.

HOW TO FILE A COMPLAINT

CIVILIAN EMPLOYEES: If you believe you are a victim of sexual harassment, you may initially raise the issue to your supervisor, through your chain of command, or directly to the EEO Office.

Informal Complaint: The issue must be raised to the EEO Office within 45 calendar days of the date the alleged sexual harassment occurred to protect your right to file a civil suit.

A counselor will be assigned to conduct an informal inquiry. Paperwork will be completed to identify the issue (e.g., sexual harassment), the basis for the complaint, the alleged offender and a proposed resolution.

The initial inquiry must be completed within 30 days, unless there is a documented agreement between the aggrieved party and the counselor extending the inquiry an additional 60 days.

The aggrieved party is entitled to a representative of their choice throughout the entire administrative process. The aggrieved party has the right to remain anonymous at this stage; however, this may impede resolution of the issue.

Regulations require all Army personnel to fully cooperate with EEO counselors in the performance of their duties.

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FORMAL COMPLAINT: If an allegation cannot be resolved informally, the aggrieved party has a right to file a formal complaint within 15 calendar days from the date of the final interview with the counselor. Formal complaints should be submitted to the EEO Office on DA Form 2590-R (available through forms support activities). EEO will request the assignment of a United States Army Civilian Appellant Review Agency (USACARA) Investigator, who makes an investigative decision as to whether discrimination occurred. Within 30 days of receipt of USACARA Report of Investigation, the complainant may request an EEOC hearing or a final Army decision. Within 180 days of filing a formal complaint, the victim may file a civil action if no appeal is filed and no decision issued.

If the complainant retains legal counsel or any representative for a formal complaint, they MUST immediately notify the EEO Officer in writing.

SOLDIERS/CADETS: If you believe you are a victim of sexual harassment, you may initially raise the issue to your supervisor, through your chain of command.

INFORMAL - An informal complaint (not filed in writing), can be resolved with the assistance of another unit member or a person in the complainant's chain of command. This complaint is not subject to time suspense, and is not reportable. In some cases, the complaint may be resolved while maintaining the confidentiality of the complainant. While those involved should attempt to protect the confidentiality of the complainant, confidentiality is not guaranteed.

FORMAL - A soldier may submit a formal complaint in the form of a sworn statement on an Equal Opportunity Complaint Form (DA Form 7279-R) available at the unit. The complaint must identify the alleged offender, witnesses, behavior, dates of occurrence, and basis (i.e., sexual harassment). Soldiers normally have 60 calendar days from the date of the alleged offense in which to file a formal complaint. If the complaint is received more than 60 calendar days after the alleged offense, the decision to conduct an investigation is left to the discretion of the command.

Should the complainant feel uncomfortable in filing a complaint within the unit chain of command, or if the complaint is against a member of the chain of command, the following alternatives are available:

- 1) Higher Echelons in the Chain of Command
- 2) Equal Opportunity Advisor
- 3) Chaplain
- 4) Inspector General
- 5) Provost Marshal/CID
- 6) Medical Agencies
- 7) Staff Judge Advocate
- 8) Housing Referral Office

Commanders will not preclude personnel from using these channels.

WHAT ARE THE PENALTIES

There are penalties for non-compliance with the Department of the Army Prevention of Sexual Harassment Policy. Sexual harassment is serious misconduct, and will be appropriately dealt with on a case by case basis.

Any civilian found to have sexually harassed a person may be subject to appropriate disciplinary sanctions ranging from a verbal reprimand to a finding in their personnel file. Serious offenses could result in termination of employment, and in civil or criminal liability for the perpetrator.

Soldiers are subject to a variety of possible disciplinary actions ranging from administrative counseling, reprimands, to separation through punitive actions under the Uniform Code of Military Justice.

Civilian employees are subject to disciplinary action in accordance with the Table of Penalties found in AR 690-700, Chapter 751.

The OPM Personnel Security Program will consider incidents of sexual harassment as adverse information when considering granting or revoking security clearances.

Retaliation against any personnel who registers a complaint is illegal. It is an additional act of misconduct which will result in appropriate disciplinary action.